

**INTERLOCAL AGREEMENT BETWEEN CITY OF EDMONDS AND
EDMONDS SCHOOL DISTRICT NO. 15**

Westgate Elementary Playground Improvements

THIS INTERLOCAL AGREEMENT ("Agreement") made this 29th day of APRIL, 2010, by and between the Edmonds School District No. 15 and the City of Edmonds, both municipal corporations under the laws of the State of Washington, hereinafter referred to as "District" and "City" respectively.

WHEREAS, Chapter 39.34, RCW (Interlocal Cooperation Act) permits local government units to make the most efficient use of their powers by enabling them to cooperate with other government entities on the basis of mutual advantage and thereby to provide services and facilities in a manner pursuant to forms of governmental organizations that will accord best with geographic, economic population, and other factors influencing the needs and development of local communities; and

WHEREAS, the District owns and operates Westgate Elementary School which is located within the comprehensive planning area of the City of Edmonds; and

WHEREAS, the City operates park and recreation programs and has identified a need for additional outdoor recreational facilities; and

WHEREAS, the City has allocated funds for development of school fields and playgrounds and has determined that the renovation of the play-ground and fields located on the School Property will be of positive benefit to the citizens of the City.

NOW, THEREFORE, the District and the City agree as follows:

1. PURPOSE

1.1 The purpose of this Agreement is to provide a cost-sharing arrangement between the District and the City to allow for improvements in the playfields and playground located on the School Property to facilitate its recreational use by the City.

1.2 The District will prepare budget estimates, develop a plan for playfield improvements, and identify any necessary permits and regulatory processes prior to approving any improvement plan in accordance with this Agreement and applicable laws.

2. CONTRACT ADMINISTRATOR

2.1 Pursuant to RCW 39.34.030(4)(a), the District will hereby appoint a Contract Administrator who will be responsible for administering this Agreement, and at the direction of the parties, this Contract Administrator shall take such action as is necessary to ensure that this Agreement is implemented in accordance with its terms. The parties hereby designate the District's Director of Facilities Operations, as the Contract Administrator of this Agreement.

2.2 This Agreement does not create a separate legal or administrative entity, and consequently is being administered in accordance with RCW 39.34.030(4), as provided in paragraph 2.1.

3. REAL AND PERSONAL PROPERTY

3.1 The District owns the real School Property which is the subject of this Agreement. This Agreement does not contemplate the transfer of ownership of the School Property nor to limit the District's ability to comply with its statutory obligations regarding the use and disposition of school property pursuant to Ch. 28A.335 RCW. The District may assign its rights and obligations under this Agreement in its sole discretion.

3.2 The parties will not, during the term of this Agreement, jointly acquire or hold any property (real or personal) under the terms of this Agreement.

3.3 Upon approval by the District and the City of a plan for the playfield improvements as defined by paragraph 5 of this Agreement, the District and the City shall provide funds, as set forth in paragraph 6 below, to the Contract Administrator for use in obtaining the personal property needed to construct the playground improvements and to pay for the labor and professional services required to renovate the playground.

3.4 By operation of this Agreement, the City acquires no interest in and disclaims any interest in the improvements constructed pursuant to this Agreement, which said improvements will be the District's property. In consideration of the City's contributions under this Agreement, the City shall have the right to use the School Property pursuant to RCW 28A.335.250 for its park and recreation programs so long as such use does not interfere with the District's use of the School Property for school purposes.

3.5 If, in the exercise of its sole discretion, the District elects to sell or otherwise remove the recreational improvements funded by this Agreement from use by the City during the ten (10) years immediately following execution of this

Agreement, the City shall be entitled to a pro-rata refund of its contribution. The refund shall be based on the percentage of months remaining in said ten (10) year period, stipulated to be approximately equal to the normal useful life of the funded recreational improvements.

4. DEVELOPMENT OF PLANS FOR IMPROVEMENTS AND PERMITTING

4.1 The District shall:

4.1.1 Develop an improvement plan.

4.1.2 Cooperate with the City to ascertain any necessary permits or required governmental approvals to complete the improvement plan. To the extent required by local regulations related to any permits necessary to implement the plan, the District shall cooperate with the City in preparing permit applications and soliciting citizen input. If the Edmonds City Council and Mayor determines that additional citizen input is desirable, the City may request additional assistance from the District, which shall not be unreasonably withheld so long as the assistance is consistent with its statutory obligations and does not involve an undue financial burden on the District.

4.1.3 Provide the City with conceptual plans of the proposed improvement plan.

4.2 The City shall:

4.2.1 Cooperate with the District to ascertain any necessary permits or required governmental approvals to complete the improvement plan. To the extent required by local regulations related to any permits necessary to implement the plan, the City shall cooperate with the District in preparing permit applications and soliciting citizen input. The City's Parks and Recreation Department shall gather any public comments and forward them to the District prior to any hearing held by the City related to the improvement plan.

5. APPROVAL OF FINAL DESIGN

5.1 Upon completion of the improvement plan and final cost estimates, the District and City may independently reexamine and confirm the project's scope of work. No final contract for the construction of the improvements shall be entered by the District, the City, or the Contract Administrator until the Contract Administrator has received written approval to proceed from both the District and the City.

5.2 Prior to approval of the final design of the improvement plan, the District and the City will have taken action, independent of this Agreement, to budget and provide the financing necessary to perform their respective obligations under this Agreement, including, but not limited to, the construction and installation of the agreed improvements.

6. FUNDING OF PLAYGROUND IMPROVEMENT PROJECT

6.1 Within thirty (30) days of the effective date of this Agreement as defined by paragraph 7.1 of this Agreement, the City shall obtain approval as required under relevant laws to fund up to Twenty-five Thousand Dollars NO/100 (\$25,000.00) and the District up to One Hundred Sixty-five Thousand and NO/100 (\$165,000) to be used to finance the planning and installation of the playground improvements contemplated by this Agreement. The District Funding includes contributions made by the Westgate Elementary School Playground Committee. The District and the City shall also obtain approval as required under relevant laws for any additional contributions required under paragraph 6.4 of this Agreement.

6.2 The District shall fund its and the City's obligations under paragraph 4.1 of this Agreement until such time as the District requests payment from the City for its share of the expenditures. Any such funds expended shall be so expended in accordance with RCW 28A.320.080 and shall apply to the District's total obligation set forth in paragraph 6.1.

6.3 The City shall fund its obligations under paragraph 4.2 of this Agreement upon request for reimbursement by the District as stated in paragraph 6.2 of this Agreement. The City shall confirm that any such funds reimbursed to the District are in accordance with laws governing such expenditures and shall apply to the City's total obligation set forth in paragraph 6.1.

6.4 Upon approval of the final design of the playfield improvement plans under paragraph 5 of this Agreement, the District shall transmit funds to the Contract Administrator for use in completing the approved playfield improvement plan. Unless the parties mutually agree in writing, the total costs of the completion of the playground improvement plan may not exceed \$190,000 PROVIDED THAT nothing in this Agreement requires or authorizes any expenditure of funds in excess of what is allowed by RCW 39.04.155.

6.5 Following approval of the final design of the playground improvement plans as specified in paragraph 6.4 above, the District and the City will direct the Contract Administrator to secure appropriate contracts for labor, goods and professional services as needed to complete the work identified in the plans in accordance with applicable laws, including but not limited to Ch. 39.04 RCW and

RCW Ch. 28A.335. The Contract Administrator will be instructed to provide regular progress reports to the District and the City and inform the District and the City if expenditures necessary to complete the approved improvements are expected to exceed \$190,000 of the public contract amount. The Contract Administrator will also notify the District and City of completion of the playground improvements for their final inspection and approval of completed work. The District and City shall provide the Contract Administrator with written approval of project completion. The Contract Administrator shall have the authority to carry out the purposes of this Agreement in accordance with this Agreement, and to carry out any necessary and proper matters to otherwise facilitate the completion of the approved playground improvement plan.

7. DURATION AND TERMINATION

7.1 The term of this Agreement shall commence as of the date first written above and shall end upon final acceptance of the project by the Contract Administrator, unless this Agreement is terminated prior to such date in accordance with paragraph 7.2. This Agreement shall take effect upon either filing a copy thereof with the County Auditor or posting on either parties' web sites in accordance with RCW 39.34.040.

7.2 Termination of this Agreement may be accomplished by mutual agreement of the parties prior to final approval of the playground improvement plan in accordance with paragraph 5. A party seeking to terminate this Agreement under this paragraph shall give the other party advance written notice of not less than thirty (30) days.

7.3 In the event it becomes necessary for the District to terminate this Agreement in order to comply with its statutory obligations regarding the use and disposition of school property under Ch. 28A.335 RCW, the District may terminate this Agreement upon thirty (30) days written notice to the City and the Contract Administrator.

7.4 If this Agreement is terminated in accordance with paragraph 7.2 or 7.3, the District and the City shall share equally in any expenditures previously incurred by either the District or the City in furtherance of the playfield improvement plan. Any plans, engineering drawings or other documents made in preparation for project design approval are deemed to be the property of the District.

7.5 Following the effective date of the termination of this Agreement under this paragraph 7, the District may complete any playground improvement plan on its own without any further obligation to the City.

8. MISCELLANEOUS

8.1 The Contract Administrator shall supervise and manage the completion of the playground improvement project on behalf of the District and the City following final design approval pursuant to paragraph 5 of this Agreement. The City shall have no responsibility to supervise or manage completion of the approved playfield improvement plans under paragraph 5 of this Agreement.

8.2 The District provides no and disclaims any and all express or implied warranties of any kind, including but not limited to the warranty of fitness for a particular purpose, in connection with or arising out of the activities under this Agreement. The District will, however, direct the Contract Administrator to make reasonable efforts to obtain warranties from the persons or entities providing labor, goods or professional services to complete the approved playground improvement project.

8.2 In the event that the District utilizes an architect or engineer by independent contract or a public works contract to fulfill completion of the project, the District shall direct the Contract Administrator to use its best efforts to obtain whatever warranties may be reasonably available and to secure contractual indemnities to protect the District and the City from liability arising out of the work performed under this Agreement, PROVIDED, however, that the District shall incur no liability arising from this Agreement if the Contract Administrator is unable to obtain such warranties and indemnities. The Contract Administrator shall also require such professional or contractor to provide adequate insurance to cover any and all liability incurred during the course of improvements which names the City and the District as named additional insureds and to extend such coverage to cover damage or injury to any reasonably foreseeable third parties and to confirm such insurance has been obtained by obtaining a copy of any related certificate of insurance before construction or installation of the approved playfield improvement plans is begun.

8.3 The District and the City will adequately provide through insurance or participation in insurance pooling for loss reserves to provide for their respective liability that could arise in connection with this Agreement.

8.4 The District and the City shall maintain records necessary to carry out the purposes of this Agreement in accordance with generally accepted accounting principles. Such records shall be available during normal working hours for the review of the respective parties, their accounting representatives or the State Auditor.

8.5 Each party to this Agreement shall be responsible for its own negligent and/or wrongful acts or omissions, or those of its agents or employees, to

the fullest extent required by law. Each party shall save, indemnify, defend and hold the other party harmless from any such liability. If more than one person or entity is negligent, any damages allowed or indemnity provided, shall be levied in proportion to the percentage of negligence attributable to each party under the laws of the State of Washington.

8.6 This Agreement and all questions concerning the capacity of the parties, execution, validity (or invalidity), and performance of this Agreement, shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Washington.

CITY OF EDMONDS

EDMONDS SCHOOL DISTRICT NO. 15


MAYOR GARY HAAKENSEN




DATE: 4/29/10

Its: Executive Director

DATE: 4/29/2010

ATTEST/AUTHENTICATED:

Board approval: 4/29/2010


SANDRA S. CHASE, CITY CLERK

APPROVED AS TO FORM:

